



DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 738, 740, 743, 772 and 774

[Docket No. 150304217-5727-02]

RIN 0694-AG44

Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendments; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: The Bureau of Industry and Security (BIS) maintains, as part of its Export Administration Regulations (EAR), the Commerce Control List (CCL), which identifies certain of the items subject to Department of Commerce jurisdiction. This correction rule revises the Commerce Country Chart by implementing revisions that BIS inadvertently omitted from the “Wassenaar Arrangement 2014 Plenary Agreements Implementation and Country Policy Amendments” rule published on May 21, 2015 (80 FR 29442) (“May 21 rule”), for Argentina and South Africa. This rule also implements the Wassenaar Arrangement (WA) agreement to make a clarification to the control text for rebreathing equipment that BIS inadvertently did not make in the May 21 rule. A license requirement note indicating jurisdiction is corrected and a related control note is clarified in an entry on the CCL controlling space launch vehicles and “spacecraft,” “space buses,” “spacecraft payloads,” etc., as the range of the reference was incorrectly stated in the May 21 rule. The reference concerning jurisdiction for “specially

designed” parts, components, systems and structures, for launch vehicles, launch vehicle propulsion systems or “spacecraft” is corrected in the CCL entry controlling such items in this rule.

In addition, this rule makes one minor correction to remove Fiji from Column D:5 “U.S. Arms Embargoed Countries,” as well as from Country Group D, because Fiji is not listed under any other column within Country Group D and because the Department of State published a final rule that revised the International Traffic in Arms Regulations (ITAR) to rescind the previous policy of denying the export of defense articles and defense services to Fiji.

Lastly, this rule removes an outdated reference in the Definitions part of the EAR.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at 202-482 2440 or by e-mail: Sharron.Cook@bis.doc.gov.

For technical questions contact:

Categories 7 & 9: Daniel Squire 202-482-3710 or Reynaldo Garcia 202-482-3462

Category 8: Michael Tu 202-482-6462

SUPPLEMENTARY INFORMATION:

Background

Supplement No. 1 to part 738 - Commerce Country Chart

In the May 21 rule, Argentina and South Africa were added to Country Group A:1. The

intent of that rule was also to harmonize Country Group A:1 with national security column 2 and regional stability column 2 of the Commerce Country Chart. However, BIS inadvertently did not remove the corresponding Xs for South Africa and Argentina. Therefore, the Commerce Country Chart is corrected by revising the second columns for national security (NS:2), and regional stability (RS:2) in order to harmonize these columns with the newly revised Country Group A:1, making the license requirement consistent with the risk of diversion to unauthorized end users, end uses and destinations. Specifically, this rule would remove the X, i.e., license requirement, in the NS:2 Column for South Africa, as well as remove the X in the RS:2 Column for Argentina and South Africa, because the risk of diversion to unauthorized destinations, parties or uses is low for these countries. Both Argentina and South Africa are WA Participating States, but are not NATO member countries.

Part 740 - Country Groups

This rule removes Fiji from Country Group D:5 “U.S. Arms Embargoed Countries,” and from Country Group D in Supplement No. 1 to part 740 of the EAR. This minor correction is not the result of a Wassenaar Arrangement agreement, but rather of a final rule published by the Department of State on May 29, 2015, 80 FR 30614 titled “Amendment to the International Traffic in Arms Regulations: Policy on Exports to the Republic of Fiji.” The State Department’s rule revised ITAR § 126.1 to remove Fiji from paragraph (p), establishing that it is the policy of the United States to no longer deny licenses or other approval for exports or imports of defense articles and defense services destined for or originating in Fiji. The reasoning behind the change stated in the State Department rule was, “On September 17, 2014, Fiji’s acting government followed through on its longstanding commitment to hold democratic elections.” There are

specific license exception restrictions that pertain to Country Group D:5 that will no longer apply to Fiji. See Part 740 of the EAR. This revision also affects the national security (§ 742.4) and regional stability (§ 742.6) license review policy for 9x515 or “600 series” ECCNs when destined to Fiji, as well as the application of the *de minimis* rules (§ 734.4) for foreign products incorporating controlled U.S. content destined to Fiji.

Section 743.3 Thermal imaging camera reporting

BIS inadvertently removed a thermal imaging camera reporting requirement exemption for Canada in the May 21 rule. The reporting requirements for thermal imaging cameras are corrected by exempting Canada from the reporting requirements, as was the policy prior to the publication of the May 21, 2015, Wassenaar rule. The exception is added to paragraph (b) of §743.3 of the EAR.

Part 772 – Definitions

This rule removes a reference for “signal analyzer (dynamic) ...” that was inadvertently not removed when the definition for “dynamic signal analyzer” was removed from this part.

Supplement No. 1 to part 774 – Commerce Control List

ECCN 8A620 – Submersible vessels, oceanographic and associated commodities

The May 21 rule inadvertently did not make a regulatory amendment that should have been made to implement a 2014 Wassenaar Arrangement agreement pertaining to diving and underwater swimming apparatus specially designed and modified for military use. The EAR amendment, which this rule makes, replaces paragraph .f with a new paragraph containing two

subparagraphs: subparagraph f.1 for self-contained diving rebreathers, closed or semi-closed circuit; and subparagraph f.2 for underwater swimming apparatus “specially designed” for use with equipment specified in paragraph f.1. Paragraph f.1 narrows the scope by adding the “self-contained” parameter, while f.2 is an expansion of controls.

ECCN 9A004 Space launch Vehicles and “Spacecraft”

The May 21 rule added paragraphs a. through f. to ECCN 9A004 in order to harmonize that ECCN with the Wassenaar dual-use list entry 9.A.4., even though the controls for these goods would be under ECCN 9A515. Because the EAR is used globally for export compliance, BIS decided that it would be easier for people to find these goods on the list where they would expect to find them on the European Union List or on the CCL prior to Export Control Reform (ECR) (in ECCN 9A004) and then follow the references in ECCN 9A004 to USML Category IV or ECCN 9A515. However, the range of reference for the paragraphs impacted by ECCN 9A515 in the License Requirement Note for 9A004.a was incorrect. The range of reference in the License Requirement Note is corrected to read “9A004.b through .f.” Also, Note 3 in the Related Controls is revised for clarity.

9A010 “Specially Designed” “Parts,” “Components,” Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or “Spacecraft”

The Heading to ECCN 9A010 is corrected by removing the reference to the ITAR for jurisdiction over these items and instead referring to the newly added Related Controls paragraph. The added Related Controls paragraph refers to USML Category IV of the ITAR and ECCN 9A604 for paragraphs 9A010.a, .b and .d, as well as USML Category XV of the ITAR

and ECCN 9A515 for paragraph 9A010.c. The Related Controls paragraph also refers to Supplement No. 4 to part 774, Order of Review, because one is supposed to review the referenced ITAR category first and if the item is not found there, then the referenced CCL ECCN should be reviewed to determine classification of items specified in ECCN 9A010.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015) has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export, reexport, or transfer (in-country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard a carrier, or en route aboard a carrier to a port, on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], pursuant to actual orders to a destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported, or transferred (in-country) before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE

FEDERAL REGISTER]. Any such items not actually exported, reexported, or transferred (in-country) before midnight, on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], require a license in accordance with this regulation.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One of the collections has been approved by OMB under control number 0694-0088, “Multi-Purpose Application,” and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other of the collections has been approved by OMB under control number 0694-0106, “Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,” and carries a burden hour estimate of 21 minutes for a manual or electronic

submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at Jasmeet_K._Seehra@omb.eop.gov or by fax to (202) 395-7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 1401 Constitution Ave., NW, Room 6622, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 41 member countries that act on a consensus basis. The corrections set forth in this rule ensure the correct implementation of agreements reached at the December 2014 plenary session of the WA. Because the United States is a significant exporter of the items covered by this rule, implementation of this rule is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members. Export controls

work best when all countries implement the same export controls in a timely manner. If this rulemaking were delayed to allow for notice and comment and a 30-day delay in effectiveness, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

The removal of Fiji from Country Group D:5 also involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Country Group D:5 identifies countries that are subject to a United States arms embargo for purposes of some license requirements and license exception availability. Designating a country as subject to a United States arms embargo is a function of the Department of State. The Department of State has determined that is in the best interests of U.S. foreign policy, national security, and human rights concerns to rescind the previous policy of denying the export of defense articles and defense services to Fiji. In this rule, BIS is merely recording the removal of the arms embargo in Fiji in its regulations to be consistent with the overall U.S. government policy regarding sales of military items that is set by the State Department. Even if BIS received public comments recommending that the arms embargo on Fiji be restored, BIS has no authority to take that action. Incurring the expense and delay of the notice and comment process in a situation where BIS has no authority to take action in response to those comments would be contrary to the public interest.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are

welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW, Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Parts 738 and 772

Exports.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 738, 740, 743, 772 and 774 of the Export Administration Regulations (15 CFR Parts 730 through 774) are amended as follows:

PART 738 [AMENDED]

1. The authority citation for part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42

U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

Supplement No. 1 to Part 738 [AMENDED]

2. Supplement No. 1 is amended by:

- a. Removing the X from the RS:2 column for Argentina; and
- b. Removing the X from the NS:2 column and the RS:2 column for South Africa.

PART 740 [AMENDED]

3. The authority citation for part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

4. Supplement No. 1 to part 740, Country Group D is amended by removing the entry for Fiji from the table.

PART 743 [AMENDED]

5. The authority citation for part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); 78 FR 16129; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

6. Section 743.3 is amended by revising paragraph (b) to read as follows:

§743.3 Thermal imaging camera reporting.

(b) *Transactions to be reported.* Exports that are not authorized by an individually validated license of thermal imaging cameras controlled by ECCN 6A003.b.4.b to a destination in Country Group A:1 (see Supplement No. 1 to part 740 of the EAR), except Canada, must be reported to BIS.

PART 772 [AMENDED]

7. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

§772.1 [Amended]

8. In §772.1, remove the entry “Signal analyzers. (dynamic) (Cat 3)—(See “Dynamic signal analyzers”.).”

PART 774 [AMENDED]

9. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42

U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

10. In Supplement No. 1 to part 774, Category 8, ECCN 8A620 is amended by revising
Items paragraph f., to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

8A620 Submersible vessels, oceanographic and associated commodities (see List of Items Controlled).

List of Items Controlled

Items:

f. Diving and underwater swimming apparatus specially designed or modified for military use, as follows:

f.1. Self-contained diving rebreathers, closed or semi-closed circuit;

f.2. Underwater swimming apparatus specially designed for use with the diving apparatus specified in subparagraph f.1;

N.B.: See also 8A002.q.

11. In Supplement No. 1 to part 774, Category 9, ECCN 9A004 is amended by:

- a. Revising the License Requirement Note in the License Requirements section; and
- b. Revising Note 3 in the Related Controls paragraph of the List of Items Controlled section, to read as follows:

9A004 Space Launch Vehicles and “Spacecraft,” “Spacecraft Buses,” “Spacecraft Payloads,” “Spacecraft” On-board Systems or Equipment, and Terrestrial Equipment, as Follows (see List of Items Controlled).

License Requirements

License Requirements Note: 9A004.b through .f are controlled under ECCN 9A515.

List of Items Controlled

Related Controls*** (3) See USML Categories IV for the space launch vehicles and XV for other spacecraft that are “subject to the ITAR” (see 22 CFR parts 120 through 130).

12. In Supplement No. 1 to part 774, Category 9, ECCN 9A010 is amended by:

- a. Revising the Heading; and
- b. Adding a Related Controls Note to the List of Items Controlled Section, to read as follows:

9A010 “Specially Designed” “Parts,” “Components,” Systems and Structures, for Launch Vehicles, Launch Vehicle Propulsion Systems or “Spacecraft”. (See Related Controls paragraph.)

List of Items Controlled

Related Controls: (1) See USML Category IV of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130) and ECCN 9A604 for paragraphs 9A010.a, .b and .d. (2) See USML Category XV of the ITAR and ECCN 9A515 for paragraph 9A010.c. (3) See Supplement No. 4 to part 774, Order of Review for guidance on the process for determining classification of items.

Dated: November 23, 2015

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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